



WISCONSIN REGULATORY DIGEST

A Publication of the HEARING AND SPEECH EXAMINING BOARD

Volume 12, No. 2

November, 2000

Law Will Protect Whistleblowers Against Retaliation

The state will protect health care industry whistleblowers from retaliation by their employers under legislation signed by Gov. Tommy Thompson.

The law also allows health care workers who believe they were disciplined for reporting possible violations to file discrimination complaints with the state.

Thompson said, "although Wisconsin is already at the forefront of health care, the law will further improve patient care by giving workers

"This bill strengthens the laws already in place to protect health care users, and it does so with minimal cost," Thompson said.

Employers found to have unfairly disciplined doctors, nurses, pharmacists, social workers and other health care workers face up to \$10,000 in civil fines under the new law.

It also gives health care workers the same right to file discrimination complaints as state employees who feel their supervisors have retaliated against them.

Under 1999 WI Act 176, retaliation includes being fired or switched to a different shift, reprimanded or threatened.

Gina Dennik-Champion, a spokeswoman for the Wisconsin Nurses Association, said the law also requires health care providers to post information on whistleblower protections and include it in their orientation for new workers.

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the protection they need to speak out when they see problems."

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"A lot of times, they use the chain of command and they keep telling them 'We'll fix it, we'll fix it' and it doesn't get fixed,"

Dennik-Champion said. “It just kind of goes nowhere. The concern still exists.”

Scott Peterson, spokesman for the Wisconsin Health and Hospital Association, said the health care industry sees the law as another step to improve patient care.

“We’re not going to achieve the high levels of quality that the public is demanding without the help of our employees,” Peterson said.

1999 WISCONSIN ACT 176

AN ACT *to amend* 111.322 (2m) (a) and 111.322 (2m) (b); and *to create* 106.06 (6), 146.997 and 230.45 (1) (L) of the statutes; **relating to:** disciplinary action against an employe of a health care facility or a health care provider who reports a violation of the law or a violation of a clinical or ethical standard by the health care facility or health care provider or by an employe of the health care facility or health care provider and providing a penalty.

*The people of the state of Wisconsin,
represented in senate and assembly, do enact
as follows:*

SECTION 1. 106.06 (6) of the statutes is created to read:

106.06 (6) The division shall receive complaints under s. 146.997 (4) (a) of disciplinary action taken in violation of s. 146.997 (3) and shall process the complaints in the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 2. 111.322 (2m) (a) of the statutes is amended to read:

111.322 (2m) (a) The individual files a complaint or attempts to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07 or, 109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 3. 111.322 (2m) (b) of the statutes is amended to read: 111.322 **(2m)** (b) The individual testifies or assists in any action or proceeding held under or to enforce any right under s. 103.02, 103.10, 103.13, 103.28, 103.32, 103.455, 103.50, 104.12, 109.03, 109.07 or,

109.075 or 146.997 or ss. 101.58 to 101.599 or 103.64 to 103.82.

SECTION 4. 146.997 of the statutes is created to read:

146.997 Health care worker protection.

(1) DEFINITIONS. In this section:

(a) “Department” means the department of workforce development.

(b) “Disciplinary action” has the meaning given in s. 230.80 (2).

(c) “Health care facility” means a facility, as defined in s. 647.01 (4), or any hospital, nursing home, community-based residential facility, county home, county infirmary, county hospital, county mental health complex, tuberculosis sanatorium or other place licensed or approved by the department of health and family services under s. 49.70, 49.71, 49.72, 50.03, 50.35, 51.08, 51.09, 58.06, 252.073 or 252.076 or a facility under s. 45.365, 51.05, 51.06, 233.40, 233.41, 233.42 or 252.10.

(d) “Health care provider” means any of the following:

1. A nurse licensed under ch. 441.
2. A chiropractor licensed under ch. 446.
3. A dentist licensed under ch. 447.
4. A physician, podiatrist or physical therapist licensed under ch. 448.
5. An occupational therapist, occupational therapy assistant, physician assistant or respiratory care practitioner certified under ch. 448.
6. A dietician certified under subch. V of ch. 448.
7. An optometrist licensed under ch. 449.
8. A pharmacist licensed under ch. 450.
9. An acupuncturist certified under ch. 451.
10. A psychologist licensed under ch. 455.
11. A social worker, marriage and family therapist or professional counselor certified under ch. 457.
12. A speech-language pathologist or audiologist licensed under subch. II of ch. 459 or a speech and language pathologist licensed by the department of public instruction.
13. A massage therapist or bodyworker issued a license of registration under subch. XI of ch. 440.
14. An emergency medical technician licensed under s. 146.50 (5) or a first responder.
15. A partnership of any providers specified under subds. 1. to 14.

16. A corporation or limited liability company of any providers specified under subds. 1. to 14. that provides health care services.

17. An operational cooperative sickness care plan organized under ss. 185.981 to 185.985 that directly provides services through salaried employees in its own facility.

18. A hospice licensed under subch. IV of ch. 50

19. A rural medical center, as defined in s. 50.50 (11).

20. A home health agency, as defined in s. 50.49 (1)(a).

(2) REPORTING PROTECTED. (a) Any employe of a health care facility or of a health care provider who is aware of any information, the disclosure of which is not expressly prohibited by any state law or rule or any federal law or regulation, that would lead a reasonable person to believe any of the following may report that information to any agency, as defined in s. 111.32 (6) (a), of the state; to any professionally recognized accrediting or standard-setting body that has accredited, certified or otherwise approved the health care facility or health care provider; to any officer or director of the health care facility or health care provider; or to any employe of the health care facility or health care provider who is in a supervisory capacity or in a position to take corrective action:

1. That the health care facility or health care provider or any employe of the health care facility or health care provider has violated any state law or rule or federal law or regulation.

2. That there exists any situation in which the quality of any health care service provided by the health care facility or health care provider or by any employe of the health care facility or health care provider violates any standard established by any state law or rule or federal law or regulation or any clinical or ethical standard established by a professionally recognized accrediting or standard-setting body and poses a potential risk to public health or safety.

(b) An agency or accrediting or standard-setting body that receives a report under par. (a) shall, within 5 days after receiving the report, notify the health care facility or health provider that is the subject of the report, in writing, that a report alleging a violation specified in par. (a) 1. or 2. has been received and provide the health care facility or health care provider with a written summary of the contents of the report, unless the agency, or accrediting or standard-setting body

determines that providing that notification and summary would jeopardize an ongoing investigation of a violation alleged in the report. The notification and summary may not disclose the identity of the person who made the report.

(c) Any employe of a health care facility or health care provider may initiate, participate in or testify in any action or proceeding in which a violation specified in par. (a) 1. or 2. is alleged.

(d) Any employe of a health care facility or health care provider may provide any information relating to an alleged violation specified in par. (a) 1. or 2. to any legislator or legislative committee.

(3) DISCIPLINARY ACTION PROHIBITED. (a) No health care facility or health care provider and no employe of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person because the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employe believes that the person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2)(d).

(b) No health care facility or health care provider and no employe of a health care facility or health care provider may take disciplinary action against, or threaten to take disciplinary action against, any person on whose behalf another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2)(c) or provided in good faith any information under sub. (2) (d) or because the health care facility, health care provider or employe believes that another person reported in good faith any information under sub. (2) (a), in good faith initiated, participated in or testified in any action or proceeding under sub. (2) (c) or provided in good faith any information under sub. (2) (d) on that person's behalf.

(c) For purposes of pars. (a) and (b), an employe is not acting in good faith if the employe reports any information under sub. (2) (a) that the employe knows or should know is false or misleading, initiates, participates in or testifies in any action or proceeding under sub. (2)(c) based on information that the employe knows or should

know is false or misleading or provides any information under sub. (2) (d) that the employee knows or should know is false or misleading.

(4) ENFORCEMENT. (a) Subject to par. (b), any employee of a health care facility or health care provider who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the department under s. 106.06 (6). If the department finds that a violation of sub. (3) has been committed, the department may take such action under s. 111.39 as will effectuate the purpose of this section.

(b) Any employee of a health care facility operated by an agency, as defined in s. 111.32(6) (a), of the state who is subjected to disciplinary action, or who is threatened with disciplinary action, in violation of sub. (3) may file a complaint with the personnel commission under s. 230.45(1) (L). If the personnel commission finds that a violation of sub. (3) has been committed, the personnel commission may take such action under s. 111.39 as will effectuate the purpose of this section.

(c) Section 111.322 (2m) applies to a disciplinary action arising in connection with any proceeding under par. (a) or (b).

(5) CIVIL PENALTY. Any health care facility or health care provider and any employee of a health care facility or health care provider who takes disciplinary action against, or who threatens to take disciplinary action against, any person in violation of sub. (3) may be required to forfeit not more than \$1,000 for a first violation, not more than \$5,000 for a violation committed within 12 months of a previous violation and not more than \$10,000 for a violation committed within 12 months of 2 or more previous violations. The 12-month period shall be measured by using the dates of the violations that resulted in convictions.

(6) POSTING OF NOTICE. Each health care facility and health care provider shall post, in one or more conspicuous places where notices to employees are customarily posted, a notice in a form approved by the department setting forth employees' rights under this section. Any health care facility or health care provider that violates this subsection shall forfeit not more than \$100 for each offense.

SECTION 5. 230.45 (1) (L) of the statutes is created to read: 230.45 (1) (L) Receive complaints under s. 146.997(4) (a) of disciplinary action taken in violation of s. 146.997 (3) and, except as provided in sub. (1m), process the complaints in

the same manner that employment discrimination complaints are processed under s. 111.39.

SECTION 6. Nonstatutory provisions.

(1) EMPLOYEE NOTIFICATION. Within 90 days after the effective date of this subsection, each health care facility, as defined in section 146.997 (1) (b) of the statutes, as created by this act, and each health care provider, as defined in section 146.997 (1) (c) of the statutes, as created by this act, shall inform its employees of their rights and remedies under this act.

SECTION 7. Initial applicability.

(1) COLLECTIVE BARGAINING AGREEMENTS. This act first applies to an employee of a health care facility, as defined in section 146.997 (1) (b) of the statutes, as created by this act, or of a health care provider, as defined in section 146.997 (1) (c) of the statutes, as created by this act, who is affected by a collective bargaining agreement that contains provisions inconsistent with this act on the day on which the collective bargaining agreement expires or is extended, modified or renewed, whichever occurs first.

Continuing Education Requirements for License Holders Who Hold More Than One License

Twenty hours of continuing education credits in a two-year period is now required for all license holders. The twenty hours must be obtained in the two-year period immediately preceding the date of the renewal application. At the time of licensure renewal, each license holder shall sign a statement certifying that he or she has completed the required courses. The license holder shall maintain record of continuing education hours for at least five years from the date the certification is signed. Individuals who hold more than one license must meet all continuing education requirements for each license.

The Board may audit the records of license holders. It is the responsibility of the license holder to substantiate all continuing education courses and any claims made about the applicability of course content to one license or another.

An individual who is licensed as an audiologist and as a speech-language pathologist must obtain twenty hours of continuing education in courses that are appropriate for each license. A total of forty hours is needed. However, course content

that is applicable to both areas may be counted toward the requirements of each license.

An individual who is licensed as an audiologist and as a hearing instrument specialist must also obtain twenty hours of continuing education in courses that are applicable toward each license. A total of forty hours is needed. For an audiologist who is also a hearing instrument specialist, the course content that is related to the selection and fitting of hearing instruments may count toward the requirements for both licenses. Course content that is not related to the selection and fitting of hearing instruments may count only toward the audiology license.

A hearing instrument specialist may only count toward the hearing instrument specialist's license the course content of audiology courses that is related to the selection and fitting of hearing instruments.

All courses shall be prior approved by the board. Courses that are approved by the American Speech-Language-Hearing Association, the American Academy of Audiology, the Wisconsin Department of Public Instruction, the International Hearing Society, or the National Board for Certification in Hearing Instrument Sciences may be accepted if the subject matter of the courses pertain to an area or topic that relates to the practice of fitting and dealing in hearing instruments, audiology or speech-language pathology.

Disposable Hearing Instruments

Hearing instruments, which are designed to be disposed of and replaced every thirty to forty days, are now available to the consumer and the dispenser. The Hearing and Speech Examining Board has reviewed statutes and rules that might be relevant to the sale and fitting of these "disposable" hearing instruments. No special provision or exemption from the statutes and rules exists relative to the sale and fitting of these disposable hearing instruments. License holders are reminded that all provisions of the statutes and rules must be adhered to for the sale of every hearing instrument. The fact that disposable hearing aids are unique in the sense that they are designed to be replaced in a relatively short period of time does not give them any special status under the law.

The Food and Drug Administration requires that within a six month period prior to the sale of a hearing instrument, a licensee must conduct a medical evaluation of the prospective user of that instrument. A waiver of the medical evaluation may be signed by an individual who is eighteen years of age or older.

The Wisconsin law requires hearing instrument specialists to administer hearing tests within a six month period prior to the sale and fitting of hearing instruments.

The seller of a hearing instrument must supply a receipt along with the purchase of every hearing instrument. The full terms of sale must be clearly stated on each receipt.

The seller of a hearing instrument must conduct an inspection of the user's ear canal.

License holders are reminded to comply with all aspects of the statutes and rules. The sale of disposable hearing instruments must meet all statutory requirements.

Department of Regulation and Licensing
Hearing and Speech Examining Board
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Verifications

For our new "online Verification of Credential Holders" visit our Website at www.drl.state.wi.us and click on the "Credential Holder Query" button.

Digest on Web Site

November, 1997, February, 1999, September, 1999 and June, 2000.

Visit the Department's Web Site

<http://www.drl.state.wi.us/>

Send comments to dorl@drl.state.wi.us

2000 Board Meeting Dates

December 4

Wisconsin Statutes and Code

Copies of the Hearing and Speech Examining Board Statutes and Administrative Code can be ordered from the Department. Include your name, address, county and a check payable to the Department of Regulation and Licensing in the amount of \$5.28. The latest edition is dated May, 2000.

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WIS. STATS. S. 440.11 ALLOWS FOR A \$50 PENALTY TO BE IMPOSED WHEN CHANGES ARE NOT REPORTED WITHIN 30 DAYS.

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